

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2016-92
SENATE BILL 803**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. INCOME TAX CHANGES

SECTION 1.1. G.S. 105-130.4(a)(6) reads as rewritten:

"§ 105-130.4. Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

...

(6)

"Public utility" means any corporation that is subject to control of one or more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, ~~the Interstate Commerce Commission~~, the Federal Energy Regulatory Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State."

SECTION 1.2. G.S. 105-153.5(c2), as amended by S.L. 2016-6, reads as rewritten:

"(c2) Decoupling Adjustments. – In calculating North Carolina taxable income, a taxpayer must add to the taxpayer's adjusted gross income any of the following items that are not included in the taxpayer's adjusted gross income:

(1) For taxable years 2014, 2015, and 2016, the amount excluded from the taxpayer's gross income for the discharge of qualified principal residence indebtedness under section 108 of the Code. The purpose of this subdivision is to decouple from the income exclusion available under federal tax law. If the taxpayer is insolvent, as defined in section 108(d)(3) of the Code, then the addition required under this subdivision is limited to the amount of discharge of qualified principal residence indebtedness excluded from adjusted gross income under section 108(a)(1)(E) of the Code that exceeds the amount of discharge of indebtedness that would have been excluded under section 108(a)(1)(B) of the Code.

...."

PART II. SALES TAX CHANGES

SECTION 2.1.(a) G.S. 105-164.13(11b), as amended by Section 3.23(a) of S.L. 2016-5, reads as rewritten:

"(11b) Sales of aviation gasoline and jet fuel to an interstate air business for use in a commercial aircraft. For purposes of this subdivision, the term "commercial aircraft" has the same meaning as defined in subdivision (45a) of this subsection. This exemption also applies to aviation gasoline and jet fuel purchased for use in a commercial aircraft in interstate or foreign commerce by a person whose primary business is scheduled passenger air transportation. This subdivision expires January 1, 2020."

SECTION 2.1.(b) This section becomes effective January 1, 2016.



SECTION 2.2. G.S. 105-164.3(33c), as amended by Section 5.5(a) of S.L. 2016-5, reads as rewritten:

"(33c) Qualifying datacenter. – A datacenter that satisfies each of the following conditions:

...

- c. The datacenter certifies that it provides health insurance for all of its full-time employees. The datacenter provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage ~~recommended~~ recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125."

SECTION 2.3. G.S. 105-164.4 reads as rewritten:

"§ 105-164.4. Tax imposed on ~~retailers~~ retailers and certain facilitators.

...

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. A person engaging in business as a retailer shall pay the tax required on the net taxable sales of the business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of items subject to tax under subsection (a) of this section in a form that may be accurately and conveniently checked by the Secretary or the Secretary's duly authorized agent. If the records are not kept separately, the tax shall be paid on the gross sales of the business and the exemptions and exclusions provided by this Article are not allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license, privilege, or other taxes. The requirements of this subsection apply to facilitators liable for tax under this Article.

(c) Certificate of Registration. – Before a person may engage in business as a retailer or a wholesale merchant in this State, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under ~~G.S. 105-164.4~~ this Article must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29."

SECTION 2.4. G.S. 105-164.7 reads as rewritten:

"§ 105-164.7. Retailer or facilitator to collect sales tax from purchaser as trustee for State.

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The requirements of this section apply to facilitators liable for tax under this Article. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser at the time of the sale except for either of the following:

- (1) Vending machine sales.
- (2) Where a retailer displays a statement indicating the sales price includes the tax."

SECTION 2.5. G.S. 105-164.13(63) reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

...

- (63) Food and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12). This exemption applies to packaging items including wrapping paper, labels, plastic bags, cartons, packages and containers, paper cups, napkins and drinking straws, and like articles that meet all of the following requirements:

- a. Used for packaging, shipment, or delivery of the food and prepared food.
- b. Constitute a part of the sale of the food and prepared food.
- c. Delivered with the food and prepared food."

SECTION 2.6. G.S. 105-164.15A(b) reads as rewritten:

"(b) Combined Rate Items. – The effective date of a rate change for an item that is taxable under this Article at the combined general rate is ~~the effective date of any of the following:~~ administered as follows:

- (1) ~~The~~ For a taxable item that is not billed on a monthly or other periodic basis, a tax change applies to amounts received for items provided on or after the effective date of a change in the State general rate of tax set in G.S. 105-164.4.
- (1a) For a taxable item that is provided and billed on a monthly or other periodic basis:
 - a. A tax increase applies to the first billing period that is at least 30 days after enactment and that starts on or after the effective date.
 - b. A tax rate decrease applies to bills rendered on or after the effective date.
- (2) For an increase in the authorization for local sales and use taxes, the date on which local sales and use taxes authorized by Subchapter VIII of this Chapter for every county become effective in the first county or group of counties to levy the authorized taxes.
- (3) For a repeal in the authorization for local sales and use taxes, the effective date of the repeal."

SECTION 2.7. G.S. 105-187.5(b) reads as rewritten:

"§ 105-187.5. Alternate tax for those who rent or lease motor vehicles.

...
 (b) Rate. – The tax rate on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). Gross receipts does not include the amount of any allowance given for a motor vehicle taken in trade as a partial payment on the lease or rental price. The maximum tax in ~~G.S. 105-187.3(a)~~ G.S. 105-187.3(a1) on certain motor vehicles applies to a continuous lease or rental of such a motor vehicle to the same person."

PART III. LOCAL GOVERNMENT TAX CHANGES

SECTION 3.1.(a) G.S. 153A-148.1(a) reads as rewritten:

"§ 153A-148.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a county who in the course of service to or employment by the county has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- ...
 (7) To disclose to the authorized finance officer of any municipality located within the county tax information in the possession of the county, as necessary to administer a tax."

SECTION 3.1.(b) G.S. 160A-208.1(a) reads as rewritten:

"§ 160A-208.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. – Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

- (5) To disclose to the authorized finance officer of the county in which the municipality is located tax information in the possession of the municipality, as necessary to administer a tax."

PART IV. MSA CHANGES

SECTION 4.(a) G.S. 66-294(b) reads as rewritten:

"§ 66-294. Duties of manufacturers.

...
(b) Nonparticipating Manufacturers. – A nonparticipating manufacturer must:

- ...
(7) Notwithstanding any other provision of law, if a newly qualified nonparticipating manufacturer is to be listed in the North Carolina Tobacco Directory (the Directory), or if the Attorney General reasonably determines that any nonparticipating manufacturer who has filed a certification pursuant to G.S. 66-291, et seq., poses an elevated risk for noncompliance with this Article, neither such nonparticipating manufacturer nor any of its brand families shall be included in the Directory unless and until such nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with G.S. 66-291, et seq., has posted a bond in accordance with this section.

The bond shall be posted by a corporate surety located within the United States in a form and manner acceptable to the Attorney General, or a cash equivalent posted by the nonparticipating manufacturer, in an amount equal to the greater of fifty thousand dollars (\$50,000) or the greatest amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of its highest calendar year's sales in North Carolina for any of the preceding three calendar years or greatest quarterly escrow deposit for any of the preceding 12 calendar quarters, depending on the manufacturer's required escrow deposit frequency. The bond or its cash equivalent shall be posted at least 10 days in advance of each calendar year or quarter depending on the manufacturer's required escrow deposit frequency. The bond shall be written in favor of North Carolina and such bond or cash equivalent shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance, in accordance with G.S. 66-294.2, of all of its duties and obligations under this Article during the year in which the certification is filed and the next succeeding calendar year. The bond may be drawn upon by the Attorney General to cover unsatisfied escrow obligations, penalties, and any other liability under the tobacco laws of the State.

Some factors, though not exclusive, which the Attorney General may consider in determining whether any nonparticipating manufacturer or importer poses an elevated risk of noncompliance are (i) the nonparticipating manufacturer or any affiliate thereof or importer has illegally failed to satisfy an escrow obligation with respect to any state in the past; (ii) any state has removed the nonparticipating manufacturer or its brand families or an affiliate or any of the affiliate's brand families from the state's tobacco directory for noncompliance with the state's laws; (iii) any state has pending litigation against, or an unsatisfied judgment against the nonparticipating manufacturer or any affiliate thereof or importer for escrow or penalties related to noncompliance with state escrow laws; (iv) the nonparticipating manufacturer sells its cigarettes or tobacco products directly to consumers via remote or other non-face-to-face means; (v) a state or federal court has determined that the nonparticipating manufacturer or importer has violated any tobacco tax or tobacco control law or engaged in unfair business practice or unfair competition; or (vi) the nonparticipating manufacturer or importer fails to submit or complete any required forms, documents, certifications, or notices, in a timely manner or, to the satisfaction of the Attorney General."

SECTION 4.(b) This section becomes effective October 1, 2016.

PART V. UI TAX CHANGES

SECTION 5.(a) G.S. 96-9.2(c) reads as rewritten:

"§ 96-9.2. Required contributions to the Unemployment Insurance Fund.

...
(c) **Contribution Rate for Experience-Rated Employer.** – The contribution rate for an experience-rated employer who does not qualify as a beginning employer under subsection (b) of this section is determined in accordance with the table set out below and then rounded to the nearest one-hundredth percent (0.01%), subject to the minimum and maximum contribution rates. The minimum contribution rate is six-hundredths of one percent (0.06%). The maximum contribution rate is five and seventy-six hundredths percent (5.76%). "Total insured wages" are the total wages reported by all insured employers for the 12-month period ending on June 30 preceding the computation date. The calculations in the table set out below are applied as of September 1 following the computation date. An employer's experience rating is computed as a reserve ratio in accordance with G.S. 96-9.4. An employer's reserve ratio percentage (ERRP) is the employer's reserve ratio multiplied by sixty-eight hundredths. A positive ERRP produces a lower contribution rate, and a negative ERRP produces a higher contribution rate.

**UI Trust Fund Balance
as Percentage of Total
Insured Wages**

Contribution Rate

Less than or equal to 1%	2.9% minus ERRP
Greater than 1% but less than or equal to 1.25%	2.4% minus ERRP
Greater than 1.25%	1.9% minus ERRP"

SECTION 5.(b) This section is effective when it becomes law and applies to contributions payable for calendar quarters beginning on or after January 1, 2017.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of July, 2016.

s/ Louis M. Pate, Jr.
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 3:55 p.m. this 11th day of July, 2016